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10/597,549	09/03/2008	Richard M. Woundy	007412.00135	2599

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EXAMINER
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KAY, MARY ANNE

ART UNIT	PAPER NUMBER
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2426

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/597,549	<b>Applicant(s)</b> WOUNDY ET AL.	
	<b>Examiner</b> MARY ANNE KAY	<b>Art Unit</b> 2426	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,8,9,11 and 16-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,8,9,11 and 16-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. In view of the appeal brief filed on July 16, 2010, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.

2. This Office Action is for the patent application 10/597549 filed on March 9, 2006.

3. The Office Actions of August 13, 2009 and March 16, 2010 are fully incorporated into this Office Action by reference.

***Status of Claims***

4. Claims 1-2, 5, 8-9, 11 and 16-26 are pending in this application.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumelsky et al. (U.S. Patent 6,463,454, referred to as **Lumelsky**) in view of Peck (U.S. PGPub 2004/0153207 A1, referred to as **Peck**) Paragraph 21. below applies.

**Claim 1**

**Lumelsky** teaches:

A method of failsoft operation, the method comprising:

providing a policy to a facility the policy defining policy limits for transactions that normally require approval from a database at a time a transaction is requested (**Lumelsky** C15:44-C16:10; Examiner's Note (EN): Transaction that require identification are guaranteed admission. Paragraph 21. below applies);

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wherein the policy includes failsoft rules governing limited transaction approval to be used by the facility in the event of a communication failure between the facility and the database at a time of a transaction request (**Lumelsky** C15:44-C16:10; EN: Transaction that require identification are guaranteed admission. Paragraph 21. below applies) ;

using, by a facility computing- device, the failsoft rules to preliminarily grant approval for the requested transaction in response to determining that a communication failure exists between the facility and the database at the time of the transaction request (**Lumelsky** C15:44-C16:10; EN: Transaction that require identification are guaranteed admission. Paragraph 21. below applies).

**Lumelsky** fails to teach:

determining that a communication failure exists between the facility and the database at a time of a transaction request;

**Peck** teaches:

determining that a communication failure exists between the facility and the database at a time of a transaction request (**Peck** ¶ 0064; EN: Examiner interprets communication with computer and controller analogous to headend-facility communication. Paragraph 21. below applies).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Lumelsky** with the determining

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that a communication failure exists as taught by **Peck** providing as part of the fail-soft operation, following of a protocol in which an error message is transmitted in the event of a failed transmission.

## **Claim 2**

**Lumelsky** fails to teach:

in response to resolution of the communication failure, transmitting an update from the facility to the database informing the database of the requested transaction.

**Peck** teaches:

response to resolution of the communication failure, transmitting an update from the facility to the database informing the database of the requested transaction (**Peck** ¶ 0064; EN: Examiner interprets communication with computer and controller analogous to headend-facility communication. Paragraph 21. below applies).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Lumelsky** with the determining that a communication failure exists as taught by **Peck** providing as part of the fail-soft operation, following of a protocol in which an error message is transmitted in the event of a failed transmission.

***Claim Rejections - 35 USC § 103***

6. Claims 5 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lumelsky** in view of Burns et al. (U.S. Patent 6,275,496, referred to as **Burns**).

**Claim 5**

**Lumelsky** fails to teach:

the facility is a cable television headend.

**Burns** teaches:

the facility is a cable television headend (**Burns** Fig. 2, el. 52; C6:9-13).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Lumelsky** with the headend as taught by **Burns** providing network resources to distribute video assets to viewers that were requested.

**Claim 25**

**Lumelsky** fails to teach:

determining that the communication failure exists based on communication delay.

**Burns** teaches:

determining that the communication failure exists based on communication delay  
(**Burns** C1:50-62).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Lumelsky** with the long as taught by **Burns** providing long delays in delivering data which look like communication failures.

***Claim Rejections - 35 USC § 103***

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell et al. (U.S. PGPub 2002/0069420 A1, referred to as **Russell**) in view of **Peck** in further view of He et al. (U.S. Patent 6,088,451, referred to as **He**), Paragraph 21. below applies.

**Claim 8**

**Russell** teaches:

A method of failsoft operation comprising:  
receiving a request for content at the facility (**Russell** ¶ 0056);  
attempting to communicate to an authorization computer a request for approval  
of the request for content (**Russell** ¶ 0056; EN: Authentication required  
from the database. Paragraph 21. below applies);

**Russell** fails to teach:

receiving , at a facility computing device, a set of failsoft rules;  
determining that a communication failure has delayed or disrupted the process of  
obtaining approval of the request from the authorization computer;  
in response to the communication failure, approving or denying the request for  
content according to the facility's received set of failsoft rules.



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**Peck** teaches:

receiving , at a facility computing device, a set of failsoft rules (**Peck** ¶ 0064; EN:

Examiner interprets that the computer receiving the set of rules is

analogous to the facility receiving the set of rules. Paragraph 21. below

applies);

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify the teachings of **Russell** with the determining that

a communication failure exists as taught by **Peck** providing as part of the fail-soft

operation, following of a protocol in which an error message is transmitted in the

event of a failed transmission.

**Russell** in view of **Peck** fails to teach:

determining that a communication failure has delayed or disrupted the process of

obtaining approval of the request from the authorization computer;

in response to the communication failure, approving or denying the request for

content according to the facility's received set of failsoft rules.

**He** teaches:

determining that a communication failure has delayed or disrupted the process of

obtaining approval of the request from the authorization computer (**He**

C15:35-C16:4; EN: Risk denial of service to authorized users);

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in response to the communication failure, approving or denying the request for content according to the facility's received set of failsoft rules (**He** C15:35-C16:4; EN: Risk denial of service to authorized users).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** in view of **Peck** with the Fail-safe policy as taught by **He** providing Server Reliability since their continuous execution plays a central role in the successful and continuous network operation.

### **Claim 9**

**Russell** fails to teach:

in response to resolution of the communication failure, transmitting an update from the facility to the database informing the database of the requested transaction.

**Peck** teaches:

response to resolution of the communication failure, transmitting an update from the facility to the database informing the database of the requested transaction (**Peck** ¶ 0064; EN: Examiner interprets communication with computer and controller analogous to headend-facility communication. Paragraph 21. below applies).

Rationale:

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** with the determining that a communication failure exists as taught by **Peck** providing as part of the fail-soft operation, following of a protocol in which an error message is transmitted in the event of a failed transmission.

***Claim Rejections - 35 USC § 103***

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Russell in view of **Burns**.

**Claim 11**

**Russell** fails to teach:

the facility is a cable television headend.

**Burns** teaches:

the facility is a cable television headend (**Burns** Fig. 2, el. 52; C6:9-13).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** with the headend as taught by **Burns** providing network resources to distribute video assets to viewers that were requested.

***Claim Rejections - 35 USC § 103***

9. Claims 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gostanian et al. (U.S. Patent 5,781,910, referred to as **Gostanian**) in view of Sheldon (U.S. PGPub 2005/0050218 A1, referred to as **Sheldon**) in further view of Benenati et

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al. (U.S. PGPub 2004/0193712 A1, referred to as **Benenati**) in further view of **He**

Paragraph 21. below applies.

**Claim 18**

**Gostanian** teaches:

A content delivery system, comprising:

wherein at least one headend IT infrastructure is provided with a policy defining policy limits for transactions that normally require real-time access to the central database, and is programmed to handle real-time transactions, without real-time access to the central database, in accordance with the policy limits (**Gostanian** Abstract),

**Gostanian** fails to teach:

a plurality of headend facilities;

a central facility including- a central database;

a distributed information technology (IT) architecture wherein a back office IT infrastructure is located at the central facility;

wherein each headend facility includes a headend IT infrastructure;

wherein the at least one headend IT infrastructure is programmed to determine

an availability of access to the central database, and in the event that

access to the central database is unavailable, handle real-time

transactions, without real-time access to the central database, in

accordance with the policy limits, thereby providing failsoft headend facility

operation.

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**Sheldon** teaches:

a plurality of headend facilities (**Sheldon ¶ 0004**);

wherein each headend facility includes a headend IT infrastructure (**Sheldon ¶ 0004**);

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Gostanian** with the headend facilities as taught by **Sheldon** providing network resources to distribute video assets to viewers that were requested.

**Gostanian** fails to teach:

a central facility including- a central database;

a distributed information technology (IT) architecture wherein a back office IT infrastructure is located at the central facility.

**Benenati** teaches

a central facility including- a central database (**Benenati ¶ 0028**);

a distributed information technology (IT) architecture wherein a back office IT infrastructure is located at the central facility (**Benenati ¶ 0028**).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Gostanian** with the central database as taught by **Benenati** providing authorization and authentication for an independent visited network.

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**Gostanian** fails to teach:

wherein the at least one headend IT infrastructure is programmed to determine an availability of access to the central database, and in the event that access to the central database is unavailable, handle real-time transactions, without real-time access to the central database, in accordance with the policy limits, thereby providing failsoft headend facility operation.

**He** teaches:

wherein the at least one headend IT infrastructure is programmed to determine an availability of access to the central database, and in the event that access to the central database is unavailable, handle real-time transactions, without real-time access to the central database, in accordance with the policy limits, thereby providing failsoft headend facility operation (**He** C15:35-C16:4; EN: Risk denial of service to authorized users).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Gostanian** with the availability of access to the central database as taught by **He** providing Server Reliability since their continuous execution plays a central role in the successful and continuous network operation.

***Claim Rejections - 35 USC § 103***

10. Claims 16-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Gostanian** in view of **Burns**, Paragraph 21. below applies.

**Claim 16**

**Gostanian** fails to teach:

wherein the at least one headend IT infrastructure is programmed to handle non-real-time transactions at least partially with the back office IT infrastructure.

**Burns** teaches:

wherein the at least one headend IT infrastructure is programmed to handle non-real-time transactions at least partially with the back office IT infrastructure (**Burns** C8:23-33).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Gostanian** with the cache memory as taught by **Burns** providing cache memory to hold a proxy copy of a target resource referenced by a URL.

**Claim 17**

**Gostanian** fails to teach:

wherein the at least one headend IT infrastructure is programmed to handle real-time transactions at least partially with the back office IT infrastructure,

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with real-time access to the central database, for real-time transactions that fall outside of the policy limits.

**Burns** teaches:

wherein the at least one headend IT infrastructure is programmed to handle real-time transactions at least partially with the back office IT infrastructure, with real-time access to the central database, for real-time transactions that fall outside of the policy limits (**Burns** C9:42-52; EN: Examiner interprets this hyperlink storage as not including additional web hyperlinks referred to on the web page. Only audio and video links are described. Paragraph 21. below applies).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Gostanian** with the real-time transactions as taught by **Burns** providing links stored in cache memory, but data stored in computer memory storage.

### **Claim 19**

**Gostanian** fails to teach:

wherein at least one of the headend facilities is for a cable television system.

**Burns** teaches:

wherein at least one of the headend facilities is for a cable television system (**Burns** Fig. 2, el. 52; C6:9-13).

Rationale:



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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Gostanian** with the headend facilities as taught by **Burns** providing network resources to distribute video assets to viewers that were requested.

***Claim Rejections - 35 USC § 103***

11. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Gostanian** in view of Lloyd et al. (U.S. PGPub 2005/0102297, referred to as **Lloyd**).

**Claim 20**

**Gostanian** fails to teach:

wherein the central database is realized as a relational database.

**Lloyd** teaches:

wherein the central database is realized as a relational database (**Lloyd** ¶ 812).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Gostanian** with the database type as taught by **Lloyd** providing a distributed object-oriented directory database reflecting "many to one" relationships of elements within a directory object class and the instantiations of that class within a named hierarchical structure.

**Claim 21**

**Gostanian** fails to teach:

wherein the central database is realized as an LDAPv3 directory.

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**Lloyd** teaches:

wherein the central database is realized as an LDAPiX.500 directory (**Lloyd ¶ 812**).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Gostanian** with the directory type as taught by **Lloyd** providing per this standard a distributed object-oriented directory database reflecting "many to one" relationships of elements within a directory object class and the instantiations of that class within a named hierarchical structure.

***Claim Rejections - 35 USC § 103***

12. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Russell** in view of Hendricks et al. (U.S. Patent 6,201,536, referred to as **Hendricks**).

**Claim 22**

**Russell** fails to teach:

wherein the request for content is a request to view pay-per-view television content.

**Hendricks** teaches:

wherein the request for content is a request to view pay-per-view television content (**Hendricks C16: 58-65**).

Rationale:

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** with the PPV as taught by **Hendricks** providing set top terminals connected to the headend.

**Claim 23**

**Russell** fails to teach:

wherein the request for content is a request to add service to a user's subscription plan.

**Hendricks** teaches:

wherein the request for content is a request to add service to a user's subscription plan (**Hendricks** C16: 52-57).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** with the adding of service as taught by **Hendricks** providing additional security when the user has not purchased the channels.

**Claim 24**

**Russell** fails to teach:

wherein the request to add service is a request to add one or more television channels to a television subscriber's subscription lineup.

**Hendricks** teaches:

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wherein the request to add service is a request to add one or more television channels to a television subscriber's subscription lineup (**Hendricks** C16:52-57).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** with the adding of service as taught by **Hendricks** providing additional security when the user has not purchased the channels.

***Claim Rejections - 35 USC § 103***

13. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Russell** in view of Buckman et al. (U.S. PGPub 2002/0188732 A1, referred to as **Buckman**) Paragraph 21. below applies.

**Claim 26**

**Russell** fails to teach:

the facility receiving periodic updates to the set of failsoft rules from the authorization computer.

**Buckman** teaches:

the facility receiving periodic updates to the set of failsoft rules from the authorization computer (**Buckman** ¶ 0029; EN: Management server maintains and updates the policy. Paragraph 21. below applies).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** with the periodic updates as taught by **Buckman** providing improved data transfer predictability by allocating network bandwidth as tunnels dedicated to applications.

### ***Response to Arguments***

14. In reference to Applicant's argument:

As a preliminary matter, Applicants submit that the finality of the Action was improper. Claim 18 was formerly a dependent claim, and was amended to be in independent form in the prior amendment filed Nov. 13, 2009. In the Final Office Action, the Office withdrew its anticipation rejection of this claim, and instead applied a new four-way combination of references. This new ground of rejection of claim 18 was not necessitated by the amendment, and Applicants should have been given a fair opportunity to respond to this new rejection.

Applicants raised this point in both the telephone request for an after-final interview (which was denied) and the Request for Reconsideration. The ensuing Advisory Action states that the amendment to claim 18 required reconsideration of the remaining dependent claims, but it overlooks the fact that claim 18 itself was not amended to require any new search or consideration. is the new ground of rejection that was not necessitated by any amendment. At a minimum, Applicants submit that the Final Office Action should have been issued in Non-Final form, and if the rejections are maintained, then they should be made in a new Non-Final Office Action.

Examiner's Response:

MPEP 2107.01-I, "The Claimed Invention Is The Focus Of The Utility Requirement" states in part "Generally speaking, however, a dependent claim will define an invention that has utility if the independent claim from which the dependent claim depends is drawn to the same statutory class of invention as the dependent claim and the independent claim defines an invention having utility." If the Independent claim is changed in any way, it affects the dependent claims. This is why a new search is done.

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## 15. In reference to Applicant's argument:

In rejecting this claim 1, the Action cites Russell et al., para. [0093] for the policy and failsoft rules. In that cited portion, the Russell et al. transaction request is a request to download a content item, and the main server checks to see how many times a given URL has previously requested to download the content item. If the URL has tried too many times (e.g., 3 times), the next download request is denied. There is no preliminary approval for the requested transaction in those rules in response to a failure. Instead, if the check fails, the request is simply denied.

The claim also recites that the failure is a communication failure between the facility and the database at the time of the transaction request. The Office concedes that Russell et al. fails to show such a failure, and cites Peck for detecting a communication failure. Peck describes a portable computing unit surveying inventory in a warehouse and communicating it to a controller, and uses acknowledgement signals and timeouts to confirm success or failure of communications between the portable unit and controller. Peck, para. [0064]. The portable unit is not requesting authorization for any transaction - it is simply reporting inventory. In the event of a failure in communications, Peck describes use of an audible or visual alarm to alert an operator. Even if Peck's detection of a communication failure were used as the failure in the Russell et al. check, there still would be no preliminary approval in response to determining that such a failure exists.

## Examiner's Response:

Applicant's arguments are persuasive. The rejections of claims 1 are withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of Lumelsky et al. (U.S. Patent 6,463,454) and Peck (U.S. PGPub 2004/0153207 A1).

## 16. In reference to Applicant's argument:

In rejecting this claim, the Office cites the same portions of Russell et al. and Peck discussed above. In this claim, the communication failure is recited as having delayed or disrupted the process of obtaining approval of the request from the authorization computer, and approves or denies the request for content according to the facility's received set of failsoft rules. The Office concedes that Russell lacks this kind of communication failure. As for Peck, the failure there is not a delay or disruption in the process of obtaining approval of the request from the authorization computer.

Peck fails to remedy the deficiencies of Russell with respect to claim 8, and thus claim 8 is allowable over the asserted combination at least for the reasons discussed above.

## Examiner's Response:

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Applicant's arguments are persuasive. The rejections of claims 8 are withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Russell et al. (U.S. PGPub 2002/0069420 A1) and Peck (U.S. PGPub 2004/0153207 A1) and He et al. (U.S. Patent 6,088,451).

17. In reference to Applicant's argument:

In the current Action, the Office withdrew the prior rejection of claim 18, but in the new rejection, the Office once again relies on Burns et al. for this feature. Applicants' response on this point is the same as it was before - the Burns et al. local service provider 110 checks its own cache, and uses its local copy if it is there. This is done regardless of whether access to the target source is available. Accordingly, and as noted before, Burns et al. does not determine an availability of access to the central database, or respond in the manner recited. The new references are only cited for other aspects of claim 18, and do not overcome the deficiency which remains in Burns et al.

Examiner's Response:

Applicant's arguments are persuasive. The rejections of claims 18 are withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Gostanian et al. (U.S. Patent 5,781,910) and Sheldon (U.S. PGPub 2005/0050218 A1) and Benenati et al. (U.S. PGPub 2004/0193712 A1) and He et al. (U.S. Patent 6,088,451).

### ***Examination Considerations***

18. The claims and only the claims form the metes and bounds of the invention. "Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the

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claim should not be read into the claim. *In re Prater*, 415 F.2d 1393, 1404-05, 162

USPQ 541, 550-551 (CCPA 1969) (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4).

The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

19. Examiner's Notes are provided with the cited references to prior art to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

20. Unless otherwise annotated, Examiner's statements are to be interpreted in reference to that of one of ordinary skill in the art. Statements made in reference to the condition of the disclosure constitute, on the face of it, the basis and such would be obvious to one of ordinary skill in the art, establishing thereby an inherent prima facie statement.

21. Examiner's Opinion: ¶¶ 18.-20. apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.



***Conclusion***

22. Claims 1-2, 5, 8-9, 11 and 16-26 are rejected.

***Correspondence Information***

23. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to MARY ANNE KAY whose telephone number is (571)270-5677. The Examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM, EST.

As detailed in MPEP 502.03, communications via Internet e-mail are at the discretion of the Applicant. Without a written authorization by Applicant recorded in the Applicant's file, the USPTO will not respond via e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application. The following is an example authorization which may be used by the Applicant:

Notwithstanding the lack of security with Internet Communications, I hereby authorize the USPTO to communicate with me concerning any subject matter related to the instant application by e-mail. I understand that a copy of such communications related to formal submissions will be made of record in the applications file.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Joseph Hirl can be reached on (571)272-3685. Any response to this office action should be mailed to:

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Commissioner of Patents and Trademarks,

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Mary Anne Kay  
Examiner

/Joseph P. Hirl/  
Supervisory Patent Examiner, Art Unit 2426  
August 16, 2010

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